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TEACHSCAPE, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CANTER & ASSOCIATES, LLC, and
LAUREATE EDUCATION, INC.,

Plaintiffs,

vs.

TEACHSCAPE, INC.,

Defendants.

No. C 07-03225 RS

DEFENDANT TEACHSCAPE, INC.'S
OBJECTIONS TO LAUREATE
EDUCATION, INC.'S REQUEST FOR
JUDICIAL NOTICE

Date: April 2, 2008
Time: 9:30 a.m.
Ctmm: 4 (5th Floor)
Honorable Richard Seeborg

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1 Defendant Teachscape, Inc. (“Teachscape”) hereby objects to Plaintiff Laureate Education
 2 Inc.’s (“Laureate”) Request for Judicial Notice in Support of Opposition to Teachscape’s Motion
 3 to Dismiss First Amended Complain (“RFJN”).

4 In its RFJN, Laureate has requested that this Court take judicial notice of certain pleadings
 5 and the transcript of a hearing in the case of *Cinebase Software, Inc. v. Media Guar. Trust, Inc.*,
 6 No. C 98-1100 FMS, 1998 WL 661465 (N.D. Cal. September 22, 1998). Specifically, Laureate
 7 seeks to have this Court take judicial notice of the complaint, briefing on the motion to dismiss,
 8 the court order on the motion to dismiss, and a transcript of the hearing in the *Cinebase* matter.
 9 All, in particular the transcript, are irrelevant and are improperly proffered by Laureate.

10 Federal courts may take judicial notice of proceedings in other courts but only
 11 “proceedings [that] have a direct relation to the matters at issue.” *U.S. ex rel Robinson Rancheria*
 12 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). *See also City and County of*
 13 *San Francisco v. Tutor-Saliba Corp.*, No. C02-5286 CW, 2005 WL 645389, at *3 (N.D. Cal.
 14 March 17, 2005) (denying request for judicial notice, stating that the “defendants wish to
 15 incorporate many lengthy prior pleadings but do not indicate how these pleadings are relevant to
 16 this motion”); *Western States Wholesale, Inc. v. Synthetic Industries, Inc.*, 206 F.R.D. 271, 273
 17 n. 1 (C.D. Cal. 2002) (“The court denies the request for judicial notice because these pleadings
 18 and orders are not relevant to Western State’s motion for class certification”); *Roskind v. Morgan*
 19 *Stanley Dean Witter & Co.*, 165 F.Supp.2d 1059, 1061 n. 1 (N.D. Cal. 2001) (“The Court
 20 declines to take judicial notice as the NASD proceeding are not relevant to the jurisdictional
 21 issues raised in Plaintiff’s motion for remand”).

22 Here, the entirety of the pleadings and transcript in *Cinebase* are irrelevant to the present
 23 motion. As discussed in connection with Teachscape’s Motion to Dismiss the First Amended
 24 Complaint, in *Cinebase*, the parties expressly agreed as to what was the allegedly infringing and
 25 infringed product. As the court in that case noted, there was “no ambiguity” as to the product at
 26 issue. Here, in stark contrast, no such agreement or lack of ambiguity exists. Further, *Cinebase*
 27 dealt with a computer program that was not yet marketed. Here, Plaintiff has sued—based upon a
 28 “guess”—that final published written and audiovisual educational degree materials in English are

1 infringing. The wholly different issues relating to access to the published work and the type of
 2 work at issue in this case and *Cinebase* render the *Cinebase* case inapposite. Indeed, the
 3 *Cinebase* complaint contained detailed allegations of stolen information, in sharp contrast to the
 4 First Amended Complaint. The complaint in *Cinebase* is simply not relevant to this case, and
 5 neither are the briefs relative to the motion to dismiss.

6 Additionally, the transcript proffered by Laureate as Exhibit F is wholly irrelevant to the
 7 copyright claim at issue here. In fact, the transcript appears to discuss the issue of the
 8 appropriateness of a preliminary injunction in that case and seems to focus on the trade secret
 9 aspect of that case. Further, much of the transcript is missing as it is under seal, making it
 10 impossible to determine the full extent and topic(s) of the discussion. Judicial notice of the
 11 hearing transcript is thus inappropriate as it does not appear to address the issues presented by
 12 Teachscape's motion to dismiss the First Amended Complaint.

13 Further, this Court should not take judicial notice of "facts" in another proceeding. While
 14 documents that are part of the public record may be judicially noticed to show, for example, that a
 15 judicial proceeding occurred or that a document was filed in another court case, "a court may not
 16 take judicial notice of findings of facts from another case." *Walker v. Woodford*, 454 F.Supp.2d
 17 1007 (S.D. Cal. 2006), citing *Wyatt v. Terhune*, 315 F.3d 1108, 1114 n. 5 (9th Cir. 2003); *Lee v.*
 18 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). See also *M/V Am. Queen v. San Diego*
 19 *Marine Constr. Corp.*, 708 F.2d 1483, 1491 (9th Cir.1983) ("a court may not take judicial notice
 20 of proceedings or records in another cause so as to supply, without formal introduction in
 21 evidence, facts essential to support a contention in a cause then before it"). To the extent that
 22 Laureate is seeking to have this Court take judicial notice of the "fact" that the defendant offered
 23 the plaintiff post-litigation access to its information (which was merely the argument of counsel),
 24 that request is improper and should be denied.

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1 For the foregoing reasons, Laureate's RFJN should be denied.
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3 Date: March 5, 2008

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5 By /S/
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7 Attorneys for Defendant
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